REMARKS

I.   General

- Claims 17-19 and 52 are rejected under 35 U.S.C. 101 as being non statutory.

- Claims 1-4, 6-12, 15-19,33, and 49-52 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 6,307,955 to Zank et al ("Zank").

- Claims 5, 11, 13, and 14 are rejected under 35 U.S.C. 103 in view of Zank and Window 2000 or Window XP of Microsoft Operating System

II.   Rejections Under 35 U.S.C. 101

Claims 17-19 and 52 are rejected under 35 U.S.C. 101 as being non statutory. Applicant has amended these claims as suggested by the Examiner. *See* Current Action, pg. 3. Therefore, Applicant requests withdrawal of the 35 U.S.C. 101 rejection of record.

III.   Rejections Under 35 U.S.C. 102; Zank

Claims 1-4, 6-12, 15-19,33, and 49-52 are rejected under 35 U.S.C. 102(b) as being anticipated by Zank. It is well settled that to anticipate a claim, the reference must teach every element of the claim. *See* M.P.E.P. § 2131. Moreover, in order for a prior art reference to be anticipatory under 35 U.S.C. § 102 with respect to a claim, "[t]he elements must be arranged as required by the claim." *See* M.P.E.P. § 2131; *citing In re Bond*, 15 U.S.P.Q.2d 1566 (Fed. Cir. 1990). Furthermore, in order for a prior art reference to be anticipatory under 35 U.S.C. § 102, "[t]he identical invention must be shown in as complete detail as is contained in the . . . claim." *See* M.P.E.P. § 2131; *citing Richardson v. Suzuki Motor Co.*, 9 U.S.P.Q.2d 1913 (Fed. Cir. 1989).

Independent Claims

As an initial matter, Applicant best understands Zank to be a type of system as described in the current specification at, e.g., paragraph [0005]. Accordingly, Applicant has acknowledged systems such as Zank and has expressly recited its claims to differentiate the current invention from such systems. As a result, the pending claims set forth patentable

differences from systems such as Zank. These differences are discussed below in greater detail.

For example, claim 1 recites "receiving a sampled pointing device (PD) signature." In the current application a PD signature is described as being created when a "user draws lines and drags (repositions) and/or clicks on icons positioned on a background." *See* current application, paragraph [0012]. As such, the recited PD signature requires dragging and/or clicking on icons positioned on a background. In contrast, Zank fails to disclose an icon positioned on a background, much less dragging and/or clicking an icon to create a signature. Zank's signature includes "pen position coordinates such as x-, y-, and z-axis data." *See* Zank at col. 5 lines 28-32. Clearly, the notion of icons are wholly absent from Zank's signature. For at least this reason, the rejection of record should be withdrawn.

Claim 1 also recites "providing data for positioning at least one object on said background image." As best understood, the Examiner points to Zank's description of a stylus being used to input a written signature on a tablet to satisfy this limitation. *See* Current Action, pg. 3. However, simply writing a signature cannot reasonably be construed as an "object," in the context of the claim. Also, as known in the art, Zank's pen tablet would not satisfy a "background image." Moreover, at the Examiner's citation, Zank discloses a step of "receiving data," not "providing data," i.e., Zank's computer 12 *receives* data from pent tablet 24. For at least these reasons, the rejection of record should be withdrawn.

Claim 17, as amended, recites "to reposition or click on one or more icon positioned on a background." Claim 33, as amended, recites a similar limitation. Applicant points out that the Examiner's proposed combination fails to satisfy this limitation. That is, Zank's signature simply includes "pen position coordinates such as x-, y-, and z-axis data." *See* Zank at col. 5 lines 28-32. In no event does Zank describe manipulating icons positioned on a background to generate a PD signature, as set forth in the claims. Clearly, the notion of icons are wholly absent from Zank's signature. For at least this reason, the rejection of record should be withdrawn.

Dependent Claims

Each of the dependent claims inherit every limitation of the claims from which they depend. As shown above, Zank fails to satisfy every limitation of the independent claims. As such, the dependent claims are patentable at least for the reasons set forth above with respect to the independent claims. Moreover, the dependent claims set forth additional limitations making them patentable in their own right.

For example, claim 3 recites "wherein operating said PD [to provide data relative to said background image] includes moving a mouse." In the Current Action, the Examiner points to Zank's mouse 18 as satisfying this limitation. *See* Current Action, pg. 4. However, a complete examination of Zank reveals that its mouse 18 is used only for moving pointer 72 about elements of the respective signatures and indicating acceptance or rejection of a previously input signature. *See, e.g.,* Zank at col. 7 lines 12-19. However, in no event does Zank's mouse play a role in generating a PD signature as set forth in the claim. According to the Examiner's own rationale, Zank would only provide data relative to a background using a stylus, not a mouse. *Id.* at col. 5 lines 20-30.

Claim 4 recites "wherein said PD signature includes data generated by clicking of said pointing device." In the Current Action, the Examiner points to Zank's mouse 18 as satisfying this limitation. *See* Current Action, pg. 4. However, as mentioned above, Zank's mouse 18 is not used for generating a PD signature. Instead, Zank's mouse 18 is used only for moving pointer 72 about elements of the respective signatures and indicating acceptance or rejection of a previously input signature. *See, e.g.,* Zank at col. 7 lines 12-19. According to the Examiner's own rationale, Zank would only provide data relative to a background using a stylus, not a mouse. *Id.* at col. 5 lines 20-30.

Claim 9 recites "wherein displaying said background image includes displaying a graphic." The Examiner points to Zank's pen tablet 24 as satisfying this limitation. *See* Current Action, pg. 5. However, there is no indication that Zank's pen tablet 24 provides any graphic. Moreover, as known in the art, pen tablets typically do not provide graphics, but instead provide blank screens for accepting written signatures. In any event, as noted above, a pen tablet cannot reasonably be construed as a "background image" in the context of the claim.

Claim 49 recites "downloading a virtual pad consisting of said background image and said object." The Examiner points to Zank's tablet 24 and signature 25 as satisfying this limitation. *See* Current Action, pg. 6. However, even if Zank's tablet 24 could reasonably be construed as a background image (which Applicant asserts it cannot), Zank's tablet could in no way be construed as a downloaded "virtual pad" as set forth in the claim. Indeed, Zank describes pad 24 as a peripheral device comprising separate hardware. *See* Zank at FIG. 1. For at least these reasons, the rejection of record should be withdrawn.

Claim 50 recites "repositioning said objects on said background image to create said PD signature." Yet again, the Examiner simply points to Zank's tablet 24 and signature 25 as satisfying this limitation. *See* Current Action, pg. 6. However, as mentioned, Zank's signature does not constitute an object. Moreover, there is no indication that Zank repositions anything, much less an object, to create a signature. At best, Zank describers recording a signature using a stylus and comparing the recorded signature to a stored signature. At no point are the signatures "repositioned." Put simply, Zank is wholly silent as to objects being repositioned to create a signature. For at least these reasons, the rejection of record should be withdrawn.

IV.   Rejections Under 35 U.S.C. 103; Zank In View Of Microsoft Operating System

Although not clear, Applicant best understands that claims 5, 11, 13, and 14 are rejected under 35 U.S.C. 103 in view of Zank and Window 2000 or Window XP of Microsoft Operating System. *See* Current Action, pg. 7 ("it would have been obvious to ... incorporate the teaching of Microsoft operating system with the system and method of Zank for accessing an application or pogrom in a very short time, by clicking other related icon after dragging and draping the icon on the desktop (background image).").

To render a claim unpatentable under 35 U.S.C. § 103, all the claim limitations must be taught by the prior art, M.P.E.P. § 2143.03. Moreover, the Examiner must provide analysis supporting any rationale why a person skilled in the art would combine the prior art to arrive at the claimed invention, and "[such] analysis should be made explicit," *KSR Int'l Co. v. Teleflex Inc.*, 550 U.S.____, 82 U.S.P.Q.2d 1385 (2007). The Examiner bears the initial burden of factually supporting any *prima facie* conclusion of obviousness, M.P.E.P. §

2142; *In re Peehs*, 204 U.S.P.Q. 835, 837 (CCPA 1980). As the applied art does not meet all the claim limitations and the Examiner has not provided proper analysis supporting rationale why a person skilled in the art would have combined the applied art to arrive at the claimed invention, a *prima facie* case of obviousness has not been established with respect to the present claims.

As an initial matter, Applicant points out that the Examiner must provide explicit analysis supporting any rationale why a person skilled in the art would combine the prior art to arrive at the claimed invention, *KSR Int'l Co. v. Teleflex Inc.*, 550 U.S.____, 82 U.S.P.Q.2d 1385 (2007). Here, the Examiner merely provides the statement that the modification would have been obvious to access an application in a short time. This is nothing more than an assertion that the claimed combination of elements was obvious to try. Although the Court has held that showing that a combination of elements was obvious to try can be proper where there is a design need or market pressure to solve a problem and there are a finite number of identified, predictable solutions, see *KSR Int'l Co.*, 82 U.S.P.Q.2d at 1390, the Examiner has not shown a design need or market pressure to solve a problem or that there are a finite number of identified, predictable solutions. Thus, the Examiner has failed to meet the burden to initially establish a *prima facie* case of obviousness under 35 U.S.C. § 103, *see In re Peehs*, 204 U.S.P.Q. 835, 837 (CCPA 1980).
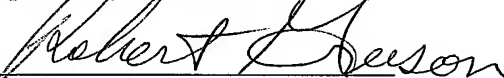
Moreover, according the Examiner's own rationale, the proposed combination would not result in the claimed invention. That is, the Examiner opines that it would be obvious to combine Zank and Microsoft operating system "for accessing an application or pogrom in a very short time." Even if true, such would not be in furtherance of the validation of an identity of a user. As known in the art, merely accessing a program in a short time is generally independent of validating a user's identity. For at least these reasons, the rejection of record should be withdrawn. Most importantly, the Examiner's proposed combination fails to satisfy every claim limitation. For example, claim 14 recites "sampling a normal mode, a "drag and drop" mode, or a click mode of said input device." Even if the Examiner's rationale is accepted, the Examiner's proposed combination does not describe sampling

different modes, i.e., a normal mode, a drag and drop mode, or a click mode, as set forth in eh claim. Therefore, Applicant requests withdrawal of the rejection of record.

In view of the above, Applicant believes the pending application is in condition for allowance. Applicant believes no fee is due with this response. However, if a fee is due, please charge any fees required or credit any overpayment to Deposit Account No. 06-2380 under Order No. 60167/WO-697003CON, during the pendency of this Application pursuant to 37 CFR 1.16 through 1.21 inclusive, and any other sections in Title 37 of the Code of Federal Regulations that may regulate fees.

Dated: January 16, 2009   Respectfully submitted,

                                             By /Robert L Greeson/
                                             Robert L Greeson
                                             Registration No.: 52,966
                                             FULBRIGHT & JAWORSKI L.L.P.
                                             2200 Ross Avenue, Suite 2800
                                             Dallas, Texas 75201-2788
                                             (214) 855-7430
                                             (214) 855-8200 (Fax)
                                             Attorney for Applicant